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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,109	09/04/2001	James Arthur Smith	213267US0PCT	2383

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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 04/22/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/926,109	Applicant(s) SMITH ET AL.	
	Examiner Cheryl Juska	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Claim Objections

1. Claim 11 is objected to for the use of the phrase "one of the layer [sic]." Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 5, 7, and 8 are rejected under 35 USC 102(b) as being anticipated by US 5,403,884 issued to Perlinski .

Perlinski discloses a process for flocking an elastomeric substrate including the steps of (a) applying an aqueous adhesive comprising 10-100% of an alkaline dispersion of an ethylene carboxylic acid copolymer and 0-90% of an aqueous elastomeric dispersion, (b) applying a flock layer to the adhesive coated substrate, and (c) drying the adhesive (abstract). The ethylene carboxylic acid copolymer, corresponding to applicant's A polymer, comprises ethylene and 1-30% by weight of an ethylenically unsaturated carboxylic acid (col. 1, line 62-col. 2, line 1). The elastomeric dispersion, which corresponds to applicant's B polymer, may be a diene-containing elastomeric polymer, such as carboxylated styrene-butadiene, EPDM, and polybutadiene (col. 5, lines 1-35). The adhesive may optionally include fillers, pigments, and viscosity improvers (i.e.,

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thickeners) (col. 6, lines 11-14). Perlinski teaches the flocked substrate may be suitable for flocked mats and flocked floor coverings (col. 6, lines 65-68). Therefore, claims 1-3, 5, 7, and 8 are anticipated by the cited Perlinski patent.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4, 6, and 13 are rejected under 35 USC 103(a) as being unpatentable over the cited Perlinski patent.

Perlinski is silent with respect to the addition of 0.1-40% by weight of an ethylenically unsaturated acid to the elastomeric dispersion (i.e., polymer B). Additionally, Perlinski is silent with respect to the thickener being a copolymer of ethylenically unsaturated compounds of at least 50% by weight of ethylenically unsaturated acids, amides, or mixtures thereof. However, it would have been obvious to one skilled in the art to add said acid to the elastomeric polymer in order to enhance the compatibility of said polymer with the ethylene carboxylic acid copolymer. Similarly, it would have been obvious to employ an ethylenically unsaturated compound such as an acid or amide as the thickener in order to enhance the compatibility with the copolymers of the adhesive composition. Therefore, claims 4, 6, and 13 are rejected as being obvious over the cited Perlinski patent.

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6. Claim 11 is rejected under 35 USC 103(a) as being unpatentable over the cited Perlinski patent.

Perlinski is silent with respect to the amount of adhesive applied. However, it would have been obvious to one skilled in the art to employ the adhesive in the amounts recited by Applicant, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

7. Claims 9, 10, and 12 are rejected under 35 USC 103(a) as being unpatentable over the cited Perlinski patent.

Perlinski does not explicitly teach a tufted carpet having a primary backing bonded to a secondary backing. However, Perlinski does teach the inventive adhesive is suitable for floor covering applications. Thus, it would have been obvious to one skilled in the art to employ a tufted fabric rather than a flocked layer since both are well-known in the art of floor coverings as suitable facings for said floor coverings. Therefore, claims 9, 10, and 12 are rejected as being obvious over the cited Perlinski patent.

Conclusion

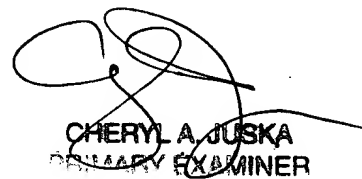
8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



CHERYL A. JUSKA
SENIOR EXAMINER